

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of: )

Revision of Part 22 and Part 90 )  
of the Commission's Rules to )  
Facilitate Future Development )  
of Paging Systems )

WT Docket No. 96-18

Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

PP Docket No. 93-253

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COMMENTS OF  
MOBILE TELECOMMUNICATION TECHNOLOGIES CORP.  
ON THE COMMISSION'S INTERIM LICENSING PROPOSAL

Mobile Telecommunication Technologies Corp. ("Mtel")<sup>1/</sup> and its subsidiary, SkyTel Corporation (collectively, "Mtel"), by their attorneys and pursuant to Section 1.415 of the Commission's rules, respectfully submit their comments in response to the Commission's Notice in the captioned proceeding.<sup>2/</sup>

<sup>1/</sup> Mtel and its subsidiaries, including SkyTel and Destineer Corp. ("Destineer"), are Commission licensees providing a wide range of high technology wireless communications services. SkyTel holds a common carrier nationwide paging license and multiple non-network paging licenses operating over frequency 931.4375 MHz on a nationwide basis. Destineer Corp. was awarded a Pioneer's Preference to operate an advanced nationwide wireless network in the narrowband Personal Communication Service ("PCS") and is currently the only nationwide narrowband PCS service provider. Accordingly, Mtel is well positioned to provide the Commission with informed comment in this proceeding.

<sup>2/</sup> Notice of Proposed Rulemaking, in WT Docket No. 96-18 and PP Docket No. 93-253 released February 9, 1996 ("Notice"). In the Notice, the Commission requested that comments be filed by March 18, 1996, and that reply comments be filed by April 2, 1996. In the Notice, the Commission also requested comments on its interim licensing proposal be filed by March 1, 1996 and that reply comments be filed by March 11, 1996. Accordingly, these comments are timely filed.

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I. INTRODUCTORY STATEMENT AND OVERVIEW

In the Notice the Commission suspended the acceptance of new paging applications and proposed the adoption of interim licensing procedures.<sup>3/</sup> The Commission sought comment on the interim licensing procedures proposed in the Notice on an expedited comment cycle "because of the urgency of interim licensing as an issue for incumbent paging licensees."<sup>4/</sup> Further, the Commission proposed to utilize geographic licensing for 931 and 929 MHz paging channels because of the large number of paging operators who are developing wide area systems in these bands. However, those channels that already have been assigned to single licensees on a nationwide basis under the Commission's existing rules would not be subject to geographic licensing.

In a matter involving Mtel uniquely, the Commission sought comment on whether to designate the Common Carrier Paging ("CCP") channel 931.4375 MHz licensed to an Mtel subsidiary as a nationwide

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<sup>3/</sup> The Commission proposed the following interim licensing procedures: (1) suspending the acceptance of new application for paging channels; (2) accepting only those applications to add to or modify existing systems so long as the additions or modifications do not expand the interference contour of the incumbent's existing system; (3) processing only those pending non-mutually exclusive applications which were filed as of the adoption date of the Notice and for which the relevant period for filing competing applications has expired as of the adoption date of the Notice; and (4) holding in pending status mutually exclusive applications until the conclusion of the rulemaking proceeding.

<sup>4/</sup> Notice at Para. 143.

channel and thus not subject to geographic licensing or the Interim Processing Rules.

With respect to the Commission's proposed Interim Processing Rules, Mtel submits that the Commission should process all applications filed prior to the issuance of the Notice. Incumbent licensees should be able to file applications which expand their interference contours in order to meet customer demand.

Mtel supports the Commission's proposal to exclude from its geographic licensing plan those channels that already have been assigned to single licensee on a nationwide basis. In addition, Mtel strongly encourages the Commission to reallocate 931.4375 MHz on a nationwide basis. This reallocation will promote regulatory parity, formalize the operational status of the channel and serve the public interest.

For the reasons set forth herein, Mtel submits that the public interest would be served by the Commission's adoption of the proposals set forth in these comments. In support, the following is shown:

**II. REALLOCATING 931.4375 MHZ ON A NATIONWIDE BASIS WILL FACILITATE REGULATORY PARITY**

SkyTel operates frequency 931.4375 MHz in concert with its network paging frequency (931.9375 MHz) to provide high quality nationwide paging service. Grant of the Commission's proposal to reallocate channel 931.4375 MHz on a nationwide basis would promote the Commission's goal of creating regulatory parity among CCP and

PCP service providers and would facilitate the creation of a level playing field for carriers licensed in the different services.

SkyTel is currently licensed to operate over 700 transmitters over the frequency 931.4375 MHz in over two hundred of the nation's largest markets. The Commission has recognized SkyTel's unique use of this frequency and has accorded it one key privilege of nationwide status by preempting state regulation of SkyTel's nationwide use of this frequency.<sup>5/</sup> There is no question but that SkyTel's situation is unique, in that it is the only entity that is exclusively licensed for a non-network frequency<sup>6/</sup> and is already licensed to operate in all major markets, as well as many small and medium-sized ones, on this frequency. Indeed, at the present, there is no licensing to any other entity on frequency 931.4375 MHz anywhere in the country and none should be warranted in the future.

As SkyTel continues to augment its system, it will either add sites in existing markets (where SkyTel's presence already precludes other carriers from applying) or expand into smaller markets where other carriers have numerous frequencies from which to choose. Neither of these expansion modes presents any legitimate risk of co-channel interference. Accordingly,

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<sup>5/</sup> See Mobile Telecommunication Technologies Corp., 6 FCC Rcd 1938, recon. 7 FCC Rcd 4061 (1992) ("Mtel"). See also In re Amendment of Sections 22.505 and 22.506 of the Commission's Rules, 8 FCC Rcd 2796 (1993) (the "Height/Power Notice").

<sup>6/</sup> SkyTel has filed over 500 931.4375 MHz applications and none have been challenged in any way.

reallocation of 931.4375 MHz on a nationwide basis would not adversely impact any other party.

The Commission has granted exclusivity on a local, regional and nationwide basis to PCP licensees operating multi-site systems based on aggregate area covered by their sites.<sup>1/</sup> PCP licensees with nationwide exclusivity are now free to design and construct their systems on their assigned frequencies without concern that other applications could be filed thus frustrating their plans for enhancement and growth of their systems. Equally relevant here, PCP licensees having exclusivity are exempt from the Commission's Interim Processing Rules.

**III. THE COMMISSION SHOULD PROCESS ALL APPLICATIONS FILED PRIOR TO THE RELEASE OF THE NOTICE AND INCUMBENT LICENSEES SHOULD HAVE THE ABILITY TO FILE SYSTEM MODIFICATION OR EXPANSION APPLICATIONS AS NEEDED TO MEET MARKET DEMAND**

SkyTel is mindful that the Commission has invited comment on the redesignation of 931.4375 MHz as a nationwide frequency. If this redesignation occurs, under the Commission's proposed geographic licensing arrangement, this would obviate the need for the Commission to continue the processing of applications for this frequency on any other basis. However, until the Commission takes

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<sup>1/</sup> The Commission decided that in order to obtain nationwide exclusivity a system must consist of at least 300 transmitters, provide service to 50 markets, including 25 of the top 50 markets, and serve at least two markets in each of the seven regions modelled on the RBOC regions. See PCP Exclusivity Order in PR Docket No. 93-35, 8 FCC Rcd 8318 (1993).

favorable action on that proposal SkyTel submits that its pending 931.4375 MHz applications should continue to be processed in due course.

The Commission proposes to process pending applications that were filed prior to the adoption of the Notice which are (1) not mutually exclusive with other applications as of the adoption date of the Notice, and (2) for which the relevant period for filing competing applications has expired as of the Notice's adoption date.<sup>8/</sup> SkyTel has numerous applications on file for the expansion of its 931.4375 MHz system which would not be processed because of the second component of the Commission's proposal. This proposal is unduly burdensome and would cause the loss of investment in time and money licensees have spent planning system modifications and preparing and filing applications with the Commission under the good faith belief that the applications would be processed under the Commission's rules then in effect.

The interim licensing procedures proposed by the Commission provide for certain limited additions and modifications. Notice, at paras. 139-149. However, these additions and modifications will be allowed only if they do not expand the interference contour of the incumbent's existing system. Id. This proposal does not fully take into account the business and competitive realities which paging companies face and which greatly inhibit a licensee's

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<sup>8/</sup> Notice at Para. 144.

ability to timely respond to customers needs for high quality service.

SkyTel, like most other paging licensees, expands its facilities on an incremental basis and adjusts its construction to meet market demands. SkyTel has not submitted applications for all of the facilities it has planned or for which user demand has evolved. Nor should SkyTel have been expected to do so. After all, filing prior to having a need for service is a form of warehousing. With the application freeze in effect, SkyTel is precluded from enlarging its 931.4375 MHz system and offering enhanced and expanded coverage to the general public. Accordingly, SkyTel submits that the application freeze should be modified to permit the expansion of existing service contours and allow incumbent licensees to provide competitive service to their customers.

#### **IV. CONCLUSION**

Mtel commends the Commission for initiating this rulemaking proceeding which will greatly streamline the paging application filing process and provide for greater regulatory parity. However, Mtel believes the goals of the Commission and the needs of the paging industry would be better served by modifying the Commission's proposals relating to the interim processing of applications consistent with Mtel's above comments. To maintain true regulatory parity, the Commission should reallocate 931.4375

MHz on a nationwide basis similar to the exclusivity granted to nationwide PCP licensees. These proposals would be consistent with Commission policy, and will contribute to the more efficient use of the Commission's resources and serve the public interest.

Respectfully submitted,

MOBILE TELECOMMUNICATION  
TECHNOLOGIES CORPORATION

and

SKYTEL CORPORATION

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